

ASSEMBLY BILL

No. 1246

Introduced by Assembly Member Jones

February 27, 2009

An act to amend Section 11003.4 of the Business and Professions Code, and to amend Section 33007.5 of, and to add Section 33075.6 to, the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1246, as introduced, Jones. Housing cooperative trust and workforce housing cooperative trust.

(1) Existing law defines “limited-equity housing cooperative” to be a corporation that meets specified criteria. Existing law exempts a limited-equity housing cooperative from specified requirements for the regulation of transactions of subdivided lands.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “housing cooperative trust” and “workforce housing cooperative trust.” The bill would exempt an entity as so defined from these provisions governing the regulation of transactions of subdivided land if, among other organizations, the Federal Home Loan Bank System or any of its member institutions and school districts directly finance or subsidize at least 50% of the total construction or development cost or \$100,000, whichever is less. The bill also would exempt such an entity from these provisions if the real property to be occupied by the cooperative was sold or leased by the Department of Transportation, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement, as specified.

(2) The Community Redevelopment Law defines “limited-equity housing cooperative” to mean a corporation organized on a cooperative basis that meets specified requirements.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “housing cooperative trust” and “workforce housing cooperative trust.” The bill would prohibit a board of directors from returning transfer value, either full or partial, to a member of the board while he or she still remains a member of the board, and would prohibit an existing member of the board of directors from accepting the return of his or her transfer value, either full or partial. The bill would require that, in any suit against a board of directors and its members for not upholding the statutes that apply to such an entity the plaintiff be awarded all attorneys fees and punitive damages. The bill would prohibit an organization formed under this section that uses public funds from using any corporate funds to avoid compliance with the Community Redevelopment Law, and from pursuing dissolution if the intent or outcome is for the members to occupy those units upon dissolution. The bill would prohibit the members of the board of directors and the board of directors from arranging to occupy units in fee simple or as a rental after dissolution of the organization.

This bill also would provide for the manner in which a workforce housing cooperative trust is organized and operated, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11003.4 of the Business and Professions
- 2 Code is amended to read:
- 3 11003.4. (a) A “limited-equity housing cooperative” or a
- 4 “housing cooperative trust” or a “workforce housing cooperative
- 5 trust” is a corporation ~~which~~ that meets the criteria of Section
- 6 11003.2 and ~~which~~ that also meets the criteria of ~~Section~~ Sections
- 7 33007.5 and 33007.6 of the Health and Safety Code, as applicable.
- 8 Except as provided in subdivision (b), a limited-equity housing
- 9 cooperative shall be subject to all the requirements of this chapter
- 10 pertaining to stock cooperatives.
- 11 (b) A limited-equity housing cooperative, a housing cooperative,
- 12 and a workforce housing cooperative trust shall be exempt from

the requirements of this chapter if the limited-equity housing cooperative, *housing cooperative, or workforce housing cooperative trust* complies with all the following conditions:

(1) The United States Department of Housing and Urban Development, the Farmers Home Administration, the National Consumers Cooperative Bank, the California Housing Finance Agency, or the Department of Housing and Community Development, *the Federal Home Loan Bank System or any of its member institutions*, alone or in any combination with each other, or with the city, county, *school district*, or redevelopment agency in which the cooperative is located, directly finances or subsidizes at least 50 percent of the total construction or development cost or one hundred thousand dollars (\$100,000), whichever is less; or the real property to be occupied by the cooperative was sold *or leased* by the Department of Transportation, *other state agency, a city, a county, or a school district* for the development of the cooperative and has a regulatory agreement approved by the Department of Housing and Community Development for the term of the permanent financing, notwithstanding the source of the permanent subsidy or financing.

(2) No more than 20 percent of the total development cost of a limited-equity mobilehome park, and no more than 10 percent of the total development cost of other limited-equity housing cooperatives, is provided by purchasers of membership shares.

(3) A regulatory agreement ~~which~~ *that* covers the cooperative for a term of at least as long as the duration of the permanent financing or subsidy, notwithstanding the source of the permanent subsidy or financing has been duly executed between the recipient of the financing and either (A) one of the federal or state agencies specified in paragraph (1) or (B) a local public agency ~~which~~ *that* is providing financing for the project under a regulatory agreement meeting standards of the Department of Housing and Community Development. The regulatory agreement shall make provision for at least all of the following:

(A) Assurances for completion of the common areas and facilities to be owned or leased by the limited-equity housing cooperative, unless a construction agreement between the same parties contains written assurances for completion.

(B) Governing instruments for the organization and operation of the housing cooperative by the members.

1 (C) The ongoing fiscal management of the project by the
2 cooperative, including an adequate budget, reserves, and provisions
3 for maintenance and management.

4 (D) Distribution of a membership information report to any
5 prospective purchaser of a membership share, prior to purchase
6 of that share. The membership information report shall contain
7 full disclosure of the financial obligations and responsibilities of
8 cooperative membership, the resale of shares, the financing of the
9 cooperative including any arrangements made with any partners,
10 membership share accounts, occupancy restrictions, management
11 arrangements, and any other information pertinent to the benefits,
12 risks, and obligations of cooperative ownership.

13 (4) The federal, state, or local public agency ~~which~~ *that* executes
14 the regulatory agreement shall satisfy itself that the bylaws, articles
15 of incorporation, occupancy agreement, subscription agreement,
16 any lease of the regulated premises, any arrangement with partners,
17 and arrangement for membership share accounts provide adequate
18 protection of the rights of cooperative members.

19 (5) The federal or state agency shall receive from the attorney
20 for the recipient of the financing or subsidy a legal opinion that
21 the cooperative meets the requirements of Section 33007.5 of the
22 Health and Safety Code and the exemption provided by this section.

23 (c) Any limited-equity cooperative, *housing cooperative or*
24 *workforce housing cooperative trust* ~~which~~ *that* meets the
25 requirements for exemption pursuant to subdivision (b) may elect
26 to be subject to all provisions of this chapter.

27 (d) The developer of the cooperative shall notify the Department
28 of Real Estate, on a form provided by the department, that an
29 exemption is claimed under this section. The Department of Real
30 Estate shall retain this form for at least four years for statistical
31 purposes.

32 SEC. 2. Section 33007.5 of the Health and Safety Code is
33 amended to read:

34 33007.5. "Limited-equity housing cooperative" *or a "housing*
35 *cooperative trust" or a "workforce housing cooperative trust"*
36 means a corporation organized on a cooperative basis ~~which~~ *that*,
37 *in addition to complying with Section 33007.6 as may be*
38 *applicable*, meets all of the following requirements:

39 (a) The corporation is any of the following:

1 (1) Organized as a nonprofit public benefit corporation pursuant
2 to Part 2 (commencing with Section 5110) of Division 2 of Title
3 1 of the Corporations Code.

4 (2) Holds title to real property as the beneficiary of a trust
5 providing for distribution for public or charitable purposes upon
6 termination of the trust.

7 (3) Holds title to real property subject to conditions~~which that~~
8 will result in reversion to a public or charitable entity upon
9 dissolution of the corporation.

10 (4) Holds a leasehold interest, of at least 20 years' duration,
11 conditioned on the corporation's continued qualification under
12 this section, and providing for reversion to a public entity or
13 charitable corporation.

14 (b) (1) The articles of incorporation or bylaws require the
15 purchase and sale of the stock or membership interest of resident
16 owners who cease to be permanent residents, at no more than a
17 transfer value determined as provided in the articles or bylaws,
18 and~~which that~~ shall not exceed the aggregate of the following:

19 ~~(1)~~

20 (A) The consideration paid for the membership or shares by the
21 first occupant of the unit involved, as shown on the books of the
22 corporation.

23 ~~(2)~~

24 (B) The value, as determined by the board of directors of the
25 corporation, of any improvements installed at the expense of the
26 member with the prior approval of the board of directors.

27 ~~(3)~~

28 (C) Accumulated *simple* interest, or an inflation allowance at a
29 rate~~which that~~ may be based on a cost-of-living index, an income
30 index, or market-interest index. Any increment pursuant to this
31 paragraph shall not exceed a 10 percent annual increase on the
32 consideration paid for the membership or share by the first
33 occupant of the unit involved.

34 (2) *For purposes of a return of transfer value, all of the*
35 *following are prohibited:*

36 (A) *A board of directors returning transfer value, either full or*
37 *partial, to a member of the board while he or she still remains a*
38 *member of the board.*

39 (B) *An existing member of the board of directors accepting the*
40 *return of his or her transfer value, either full or partial.*

1 (c) The articles of incorporation or bylaws require the board of
2 directors to sell the stock or membership interest purchased as
3 provided in subdivision (b), to new member-occupants or resident
4 shareholders at a price ~~which~~ *that* does not exceed the “transfer
5 value” paid for the unit.

6 (d) The “corporate equity,” which is defined as the excess of
7 the current fair marketed value of the corporation’s real property
8 over the sum of the current transfer values of all shares or
9 membership interests, reduced by the principal balance of
10 outstanding encumbrances upon the corporate real property as a
11 whole, shall be applied as follows:

12 (1) So long as any such encumbrance remains outstanding, the
13 corporate equity shall not be used for distribution to members, but
14 only for the following purposes, and only to the extent authorized
15 by the board, subject to the provisions and limitations of the articles
16 of incorporation and bylaws:

17 (A) For the benefit of the corporation or the improvement of
18 the real property.

19 (B) For expansion of the corporation by acquisition of additional
20 real property.

21 (C) For public benefit or charitable purposes.

22 (2) Upon sale of the property, dissolution of the corporation, or
23 occurrence of a condition requiring termination of the trust or
24 reversion of title to the real property, the corporate equity is
25 required by the articles, bylaws, or trust or title conditions to be
26 paid out, or title to the property transferred, subject to outstanding
27 encumbrances and liens, for the transfer value of membership
28 interests or shares, for use for a public or charitable purpose.

29 (e) Amendment of the bylaws and articles of incorporation
30 requires the affirmative vote of at least two-thirds of the
31 resident-owner members or shareholders.

32 (f) *In any suit against a board of directors and its members for*
33 *not upholding the statutes that apply to limited-equity housing*
34 *cooperatives, the plaintiff shall be awarded all attorneys fees and*
35 *punitive damages.*

36 (g) (1) *If an organization formed under this section uses public*
37 *funds, it shall not use any corporate funds to avoid compliance*
38 *with this act and to pursue dissolution if the intent or outcome is*
39 *for the members to occupy those units upon dissolution.*

1 (2) *The members of the board of directors and the board of*
2 *directors shall not arrange to occupy units in fee simple or as a*
3 *rental as an outcome of their dissolution of the organization.*

4 SEC. 3. Section 33007.6 is added to the Health and Safety
5 Code, to read:

6 33007.6. (a) A “workforce housing cooperative trust” is an
7 entity organized under this section that complies with Section
8 33007.5 and with all of the following:

9 (1) Allows the governing board to be composed of two classes
10 of board members. One class is elected by the residents, and one
11 class is appointed by sponsor organizations, including employer
12 and employee organizations, chambers of commerce, government
13 entities, unions, religious organizations, nonprofit organizations,
14 cooperative organizations, and other forms of organizations.
15 Resident members shall elect a majority of the board members.
16 However, sponsor organizations may appoint up to one less than
17 a majority of the board members. The numerical composition and
18 class of the sponsor and resident board members shall be set in the
19 articles of incorporation and in the bylaws.

20 (2) Requires the charter board of a workforce housing
21 cooperative trust to be composed of only sponsor board members,
22 to remain in place for the first three years after the first resident
23 occupancy. After three years of occupancy, resident members shall
24 elect a majority of the board members.

25 (3) Prohibits the removal of the appointees of sponsor
26 organizations, except for cause.

27 (4) Allows for the issuance of separate classes of shares to
28 sponsor organizations or support organizations. These shares shall
29 be denominated as “workforce housing shares” and shall receive
30 a rate of return of no more than 10 percent simple interest pursuant
31 to paragraph (3) of subdivision (b) of Section 33007.5.

32 (5) Requires, upon amendment of the bylaws and articles of
33 incorporation of a workforce housing cooperative trust, as needed,
34 the affirmative vote of at least a majority of the resident-owner
35 members or shareholders and a majority of each class of board
36 members. The rights of the sponsor board members or the sponsors
37 shall not be changed without the affirmative vote of two-thirds of
38 the sponsor board members.

39 (6) Requires conformance with every aspect of this section to
40 seat sponsor directors in accordance with the original bylaws.

1 These directors shall be removed only for cause. This section also
2 applies to any organization previously formed under this section
3 prior to January 1, 2010, that had sponsor seats designated in its
4 bylaws.

5 (b) A workforce housing cooperative trust shall be entitled to
6 operate statewide in order to sponsor limited-equity housing
7 cooperatives at multiple locations. A workforce housing
8 cooperative trust may either own or lease land for the purpose of
9 developing limited-equity housing cooperatives.

10 (c) A workforce housing cooperative trust may be created when
11 at least 51 percent of the occupied units in a multifamily property
12 that is in foreclosure support efforts to buy the building or property.